

Title 9
Chapter 9.04
RIGHT TO FARM

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9.04.010 Purpose.

The Board recognizes that farming is an essential enterprise and an important industry that enhances the economic base, natural environment and quality of life in the Town of Big Flats. Therefore, the Town Board of the Town of Big Flats finds and declares that this Town encourages its agriculture and urges understanding of and cooperation with the necessary day-to-day operations involved in farming.

It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the Town, to permit the continuation of agricultural practices, to protect the existence and operation of farms, to encourage the initiation and expansion of farms and agribusiness, and to promote new ways to resolve disputes concerning agricultural practices and farming operations. In order to maintain a viable farming economy in Big Flats it is necessary to limit the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

9.04.020 Definitions

Farmland shall mean land used in agricultural production as defined in Subdivision 4 of Section 301 of Article 25AA of the State Agriculture and Markets Law.

Farmer shall mean any person, organization, entity, association, partnership, limited liability company or corporation engaged in the business of agriculture, whether for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock.

Agricultural Products shall mean those products as defined in Section 301(2) of Article 25AA of the State Agriculture and Markets Law, including but not limited to:

- a. Field crops, including corn, wheat, rye, barley, hay, potatoes and dry beans.
- b. Fruits, including apples, peaches, grapes, cherries and berries.
- c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- d. Horticulture specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.

- f. Woodland products, including maple sap, logs, lumber, posts and firewood.
- g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
- h. Aquaculture products, including fish, fish products, water plants and shellfish.

Farm woodland includes land used for production and sale of woodland products including, but not limited to logs, lumber, posts and firewood.

Agricultural practices shall mean those practices necessary for the on farm production, preparation and marketing of agricultural commodities. Examples of such practices include, but are not limited to, operation of farm equipment, proper use of agricultural chemicals and other crop protection methods, manure application and construction and use of farm structures and fences.

Farm Operation shall be defined in Section 301(11) in the State Agriculture and Markets Law.

9.04.030 Right to Farm Declaration

Farms, as well as those employed, retained or otherwise authorized to act on behalf of *farmers*, may lawfully engage in *agricultural practices* within this Town at all times within an established Agricultural District within the Town as provided under Article 25AA of the New York State Agriculture and Markets Law and as authorized under Title 17 “Zoning” of the Town. For any agricultural practice, in determining the reasonableness of the time, place and methodology of such practice, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies.

Agricultural practices conducted on *farmland* shall not be found to be public or private nuisance if such agricultural practices are:

- a. Reasonable and necessary to the particular farm or *farm operation*.
- b. Conducted in a manner that is not negligent or reckless.
- c. Conducted in conformity with generally accepted and sound agricultural practices.
- d. Conducted in conformity with all local, state and federal laws and regulations.
- e. Conducted in a manner that does not unreasonably obstructs the free passage or use of navigable or flowing waters or public roadways.

Nothing in this Local Law shall be construed to prohibit an aggrieved party from recovering from damages for bodily injury or wrongful death due to failure to follow sound agricultural practices, as outlined in this section.

9.04.040 Notification of Real Estate, Buyers and Prospective Neighbors

In order to promote harmony between farms and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 310 of the Article 25AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows: “It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food and other products and also for its natural and ecological value. This notice is to inform prospective

residents that farming activities occur within the Town. Such farming activities may include, but not be limited to, activities that cause noise, dust, smoke and odors.

9.04.050 Resolution of Disputes

Should any controversy arise regarding inconveniences occasioned by agricultural operations, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to a request for a determination by the Commissioner of Agriculture and Markets about whether the practice in question is sound pursuant to Section 308 of Article 25AA of the State Agriculture and Markets Law and prior to the filing of any court action.

Any controversy between the parties shall be submitted, in writing, filed with the Town Clerk, within thirty (30) days of the last date of occurrence of the particular activity giving rise to the controversy of the date the party became aware of the occurrence.

The Town Board shall proceed to form a committee which shall be composed of three (3) members, one (1) person selected from the County Agricultural and Farmland Protection Board, one (1) person selected by the Town Board and (1) person mutually agreed upon by both parties involved in the dispute.

The effectiveness of the committee as a forum for the resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to consult with agricultural experts such as New York State Agriculture and Markets, Cornell University, Cornell Cooperative Extension, Natural Resources Conservation Service and Soil and Water Conservation District.

Within thirty (30) days after final formation of the committee, upon written notice to the parties, the committee shall hold a meeting to consider the merits of the matter, at which time both parties shall have an opportunity to present what each considers the pertinent facts for the committee to consider. Within five (5) days after the conclusion of the meeting or any adjourned date of said meeting, the minutes of said meeting and decision of the committee shall be filed with the Town Clerk.

The time limits provided in this subsection for action by the committee may be extended upon the written stipulation of all parties in the dispute.

Any reasonable costs associated with the functioning of the committee process shall be borne by the participants equally. The prevailing participant shall be entitled to reasonable fees, including attorney fees and other expenses incurred, only if the final determination is pursuant to an opinion issued by the Commissioner under section 308 of the New York Agricultural Districts Law.

9.04.060 Severability

Should any section or portion of this Local Law be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Local Law, which shall remain in full force and effect.

9.04.070 Effective Date

This Local Law shall be effective immediately upon filing with the New York State Department of State pursuant to Section 27 of the Municipal Home Rule Law. Further, this Local Law shall be filed with the New York State Department of Agriculture and Markets, New York State Department of Environmental Conservation and New York State Department of Health.

Filed: June 2, 2009